

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OMARRIO MORRISON,

Petitioner,

-against-

MICHAEL CAPRA,

Respondent.

ORDER

23 Civ. 2598 (VB) (AEK)

THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.¹

Petitioner Omarrio Morrison, who is incarcerated at the Sing Sing Correctional Facility, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, seeking relief from his New York State conviction on various grounds. ECF No. 1 (“Petition”). In a letter dated March 20, 2023 and submitted with the Petition, Petitioner requested that his Section 2254 petition be “held in abeyance until” the state trial court rules on his claims of ineffective assistance of counsel, *Brady* violations, and prosecutorial misconduct. *Id.* at 3, 6; ECF No. 9.² Petitioner subsequently filed a formal motion requesting a stay of these proceedings; that filing is dated April 24, 2023, and was received by the Court on April 28, 2023. ECF No. 9.

For a stay to be granted, Petitioner must demonstrate that he “[1] had good cause for his failure to exhaust, [2] his unexhausted claims are potentially meritorious, and [3] there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.” *Rhines v. Weber*, 544 U.S. 269, 270 (2005). While the motion recites relevant procedural dates and details regarding Petitioner’s current motion in New York State court pursuant to Section 440.10 of the

¹ The Honorable Vincent Briccetti referred this matter to the undersigned on April 21, 2023. ECF No. 6.

² Citations to the Petition refer to the pagination generated by the Court’s CM/ECF docketing system and not the document’s internal pagination.

New York Criminal Procedure Law, the motion does not provide any explanation for why he did not raise these claims sooner in state court. Accordingly, the Court does not have sufficient information at this time to make a determination as to whether Petitioner had “good cause” for his failure to exhaust the claims that are the subject of the pending § 440.10 motion, or to assess whether those claims, which already have been rejected by a County Court Judge in Orange County, are potentially meritorious.

Accordingly, it is HEREBY ORDERED that:

1. Petitioner’s motion requesting a stay of these proceedings is DENIED WITHOUT PREJUDICE. By May 26, 2023, Petitioner may file a new motion to address the issues referenced above. In this submission, Petitioner should describe the unexhausted claims with specificity, and should also explain why he believes the unexhausted claims have merit and how he exercised diligence in raising those claims in New York State courts.
2. Respondent may file a response to the motion to stay the proceedings by June 16, 2023.
3. Respondent’s deadline to file and serve (1) an answer, motion, or other response to the Petition, and (2) the transcripts and briefs identified in Rule 5(c) of the Rules Governing Section 2254 Cases in the United States District Courts, is STAYED pending resolution of the renewed motion for a stay of the proceedings.

4. The Clerk of Court is respectfully directed to mail a copy of this order to the *pro se* Petitioner, and to terminate the motion at ECF No. 9.

SO ORDERED.

Dated: May 5, 2023
White Plains, New York



ANDREW E. KRAUSE
United States Magistrate Judge